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SECRETARY OF STATE OFFICE  
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**TITLE 2. ADMINISTRATION**  
**DIVISION 7. SECRETARY OF STATE**  
**CHAPTER 15. TRUSTWORTHY ELECTRONIC DOCUMENT OR RECORD**  
**PRESERVATION**

***ADDING SECTIONS 22620.1 THROUGH 22620.8 TO A NEW CHAPTER IN TITLE***  
***2 CALIFORNIA CODE OF REGULATIONS PERTAINING TO TRUSTWORTHY***  
***ELECTRONIC DOCUMENT OR RECORD PRESERVATION***

**INITIAL STATEMENT OF REASONS**

This is the Initial Statement of Reasons required by Government Code section 11346.2.

**INTRODUCTION**

Government Code section 12168.7(a) establishes the statutory framework for the Secretary of State to adopt uniform statewide standards for the purpose of storing and recording permanent and nonpermanent documents in electronic media.

Government Code section 12168.7(b) gives the Secretary of State authority to adopt regulations, in consultation with the Department of General Services, approving and adopting appropriate standards established by the American National Standards Institute (ANSI) or Association for Information and Image Management (AIIM). In addition SB 2067, Chapter 569, Statutes of 2000, which amended Government Code section 12168.7, required that reproduction of those records be done in compliance with minimum standards or guidelines, or both, recommended by ANSI or AIIM.

Government Code section 12168.7(c) requires the standards specified include a requirement that a trusted system be utilized.

In 2000, when the Legislature passed and the Governor signed SB 2067 (Bowen), the Legislature recognized that it would take time to adopt statewide standards. Government Code section 12168.7(d) required in order to develop statewide standards as expeditiously as possible, and until the time that statewide standards are adopted under subdivision (b), state officials ensure that microfilming, electronic data imaging, and photographic reproduction are done in compliance with the minimum standards or guidelines, or both, as recommended by ANSI or AIIM for recording of permanent or nonpermanent records. Even so, the Secretary of State's office continued to receive complaints about the lack of staff resources or expertise at the local level to determine what standards they are to follow.

Since September 2007, efforts have been taken by the Secretary of State's office to work with interested parties, including state officials, local governments, special districts, nonprofits, ANSI, AIIM, DGS, professionals from various industries, businesses and others, to determine the minimum standards or guidelines that would meet the intent of SB 2067.

The proposed regulations create a new chapter, "Trustworthy Electronic Document or Record Preservation," to adopt appropriate standards that must be met when putting in place an electronic content management system for storing, recording or reproducing permanent and nonpermanent documents as provided in the Government Code section 12168.7; and with the goal of providing clearer rules and instructions concerning documents or records in the electronic media. It also provides recommendations for existing systems. When the minimum standards were explained in a readily available guideline, the section of the guideline was adopted.

These regulations establish the minimum standards all county government offices, including the Board of Supervisors, County Recorder, County Auditor, County Treasurer, and social service agencies; city government offices; special districts; and the State Registrar of Vital Statistics are required to follow.

In addition, Government Code section 12168.7(c)'s definition of "trusted system" will be further clarified by adopting AIIM's published minimal conditions.

## **SPECIFIC PURPOSE OF THE REGULATIONS**

The Secretary of State has written the regulations in an effort to address Government Code section 12168.7, recognizing California law currently exists for state or local government, including cities, counties, or special districts, which points back to 12168.7. In some cases, the citations are listed in current code for Government Code section 12168.7; however, in other cases it is not, such as Evidence Code section 1550. Government Code sections cited in Government Code section 12168.7 include 25105, 26205, 26205.1, 26205.5, 26907, 27001, 27322.2, 34090.5, and 60203; Health and Safety Code section 102235; and Welfare and Institutions Code section 10851. It is not the Secretary of State office's role to interpret each code section's applicability to each organization but to adopt standards, in consultation with the Department of General Services that meet the intent of Government Code sections 12168.7(a) – (c).

The specific purpose of each adoption, and the rationale for the determination that each adoption is reasonably necessary to carry out the purpose for which it is proposed, together with a description of the public problem, administrative requirement, or other condition or circumstance that each adoption is intended to address, is as follows:

**Proposed Section 22620.1** will provide the purpose for the proposed regulations. The Secretary of State reviewed more than 100 standards and selected one standard and several sections in a guideline for inclusion in the regulations that will have the most

effective and efficient impact on government to create and maintain authentic, reliable, and useable records; and to protect the integrity of those records for as long as required. When the minimum standards were explained in a readily available guideline, the section of the guideline was adopted.

**Proposed Section 22620.2** will provide the applicability of electronic documents or records created or stored as the official record. Since it will take time to consider the impact and impose change on documents or records created or stored electronically, the regulations provide that the provision of this new chapter will apply six months after the adoption of the regulations. The six months will also allow enough time for entities to address these requirements in their request for proposals or in-house projects being planned. The six months was derived after consulting with interested persons.

Since some entities merely store electronic records for convenience and quick access, but rely on the paper as the official record, the regulations clarify the regulations for electronic recording, storage and reproduction would not apply.

Since many documents or records created today are digitally born, meaning they originated in electronic format, the regulations clarify that the regulations apply if they are maintained as the official document or record. This section of proposed regulation is necessary because many official documents are created and stored only in digital format. However, the Secretary of State's office is aware that in some cases, local statute *only* relies on the definition of "trusted system" under section Government Code section 12168.7 specifically when "paper records are to be destroyed" after being transferred to an electronic trusted system. To address this potential ambiguity, the proposed regulation Section 22620.3 allows the local government to define what constitutes an "official record" for purposes of this proposed Chapter.

**Proposed Section 22620.3** will define terms used in the proposed regulations. The definitions were created to accommodate the wide and diverse number of entities impacted by these regulations. The need to clarify what is the definitions are of "official documents" or "official records" is necessary because some entities already define what constitutes an official record while others do not. The definition proposed allows entities to use their definition already in place, whether in statute or in business practices. For those entities that do not have such definitions, the proposed language also allows entities to create definitions for official documents or official records stored in the system. For those who need help understanding what should be included in the business practices documentation, the clarification can be found in the proposed language in Section 22620.5.

**Proposed Section 22620.4** will adopt section 6.2 Recommended Project Steps and Activities of "AIIM ARP1-2009 Analysis, Selection, and Implementation of Electronic Document Management Systems," to provide for uniform project steps and activities to follow in the planning and implementation of electronic content management systems. Projects too many times are implemented without thoroughly understanding the "who, what, when, where, why or how" about the automation effort being planned and

implemented. These steps and activities recommended by AIIM will improve an entity's overall success to evaluate the business and technology needs of the information to be stored electronically.

Since SB 2067 was approved by Legislature in 2000, the steps outlined by AIIM may not have been followed for systems currently in place, including meeting the conditions for a trusted system. As such, the regulations clarify what should be done for existing systems. The regulations avoid mandating changes to existing systems by using the word "should" vs. "shall" by stating that existing systems should be evaluated as soon as practicable and that entities secure all necessary local or state approvals to meet the intent of the code. The proposed regulation providing a separate provision for existing systems is necessary because current systems cannot be "designed and implemented" following the recommended "project steps and activities" if the system is already in place. This should not, however, prevent entities from evaluating their existing systems as stated in the proposed regulations for compliance under what has been in place since 2000 under Government Code 12168.7(d), recognizing the clarification of what constitutes a "trusted system" provided by AIIM is fairly new, and only in place since 2009.

**Proposed Section 22620.5** will adopt section 6.17 Business Practices Documentation of "AIIM ARP1-2009 Analysis, Selection, and Implementation of Electronic Document Management Systems" to ensure appropriate policies and procedures associated with the creation, management and storage of electronic documents or records are prepared, this section will require that the information be in writing by requiring a document management policy prior to system implementation, and updated regularly. This will improve an entity's ability to explain to others what it does to capture, store and reproduce its records or documents in the electronic content management system, along with the when, where, why, how and by whom.

**Proposed Section 22620.6** will adopt section in 5.4.2.4 Document image compression of "AIIM ARP1-2009 Analysis, Selection, and Implementation of Electronic Document Management Systems" to provide for uniform standards related to electronic file compression when an entity determines the need for compression. This proposed regulation is necessary to provide for uniform standards related to electronic file compression when an entity determines the need for compression. Following standard compression standards reduces the risk that the document or record will not be able to be uncompressed and opened.

**Proposed Section 22620.7** will adopt section 5.3.3 Trusted System and Legal Considerations of "AIIM ARP1-2009 Analysis, Selection, and Implementation of Electronic Document Management Systems" to provide specific conditions that would meet the definition of trusted system, as provided in Government Code section 12168.7(c). Without this regulation, there is the risk that documents or records could differ substantially from what was originally stored.

Government Code section 12168.7(c) requires that the standards adopted by the Secretary of State include a requirement that a trusted system be utilized. However, neither AIIM

nor ANSI has standards or guidelines that “require” a trusted system be utilized. Rather, the standards and guidelines explain why a trusted system may or should be used and outline what the conditions to meet the minimum standards for a trusted system. AIIM’s definition for a trusted system is being incorporated by reference and is the best information to date. This approach seems to fit well with the statute from other governments referencing to Government Code section 12168.7 that either require a trusted system or refer to 12168.7 for its definition.

This proposed regulation is necessary because although Government Code section 12168.7(c) defines trusted system to mean “a combination of techniques, policies, and procedures for which there is no plausible scenario in which a document retrieved from or reproduced by the system could differ substantially from the document that is originally stored,” it does not include the conditions required for an electronic storage and management system to be considered a “trusted system.” This lack of clarity has resulted in inconsistent guidance about what is required for an entity to store official records to a trusted system. This has led to entities storing both the electronic copy and hard copy of the document converted to electronic media. The proposed regulations clarify this confusion by providing the conditions to meet the definition of a “trusted system” by adopting AIIM’s definition of trusted system. In addition, “policies and procedures” is further defined by adopting section 6.17 of the Business practices documentation of “AIIM ARP1-2009 Analysis, Selection, and Implementation of Electronic Document Management Systems.”

**Proposed Section 22620.8** will adopt section 5.4.1.4 Image formats of “AIIM ARP1-2009 Analysis, Selection, and Implementation of Electronic Document Management Systems” and require compliance with ANSI/AIIM/CGATS/ISO 19005-1:2005 only if PDF/A is chosen as the file format for long term storage. The proposed regulation will clarify and provide guidance on the choice of file formats when storing files, and share known concerns. AIIM put together this section in AIIM ARP-1-2009 after consulting with its committee members and provides valuable information for entities to consider choosing its file format for the electronic documents or records being captured and stored.

Section 22620.8 also incorporates by reference the standard to follow when choosing PDF/A as the file format. The standard is ANSI/AIIM/CGATS/ISO 19005-1:2005 and is similar to the ISO standard 19005-1:2009, but adopted in the United States by AIIM and the Graphic Arts Technologies Standards (CGATS). The copyright is owned by AIIM and NPES - The Association for Suppliers of Printing, Publishing and Converting Technologies. This proposed regulation is necessary to ensure a standardize PDF/A format is followed when choosing the PDF/A file format.

In all cases, the standard or guideline have been incorporated by reference in the regulations pursuant to 1 CCR § 20 because it would be cumbersome and impractical to publish the documents in the California Code of Regulations due to volume of information in the standard or guideline, and because of ANSI and AIIM copyrights. Each document referenced in the regulations has copy rights and incorporating them by

reference eliminates the concern by ANSI and AIIM that they would lose their copyrights if the actual wording from the guideline or standards were set forth in the regulations. The Secretary of State, in accordance with 1 CCR § 20 provides the Web address where the guideline or standard can be obtained.

The advantage of adopting standards approved by ANSI or AIIM is that the standards from these organizations are the latest in the industry and finalized only after following strict guidelines and processes that include experts in the industry and community around the world. This is a service that is not currently available from any state agency or department in California government. Although the versions adopted in the regulations are the latest available in the industry to date, as new versions are released, the regulations will need to be updated accordingly.

### **LOCAL MANDATE DETERMINATION**

The proposed regulations do not impose any mandate on local agencies or school districts.

SB 2067, which amended Government Code section 12168.7, was classified to be a non-state-mandated local program. These regulations specify what shall or should be done to comply with existing code. The regulations require a “shall” only for new systems or if the entity decides to do something, such as if determining the need for files to be compressed; if using the file format PDF, then requiring that the format be PDF/A; or what must be in place for a system to be considered a “trusted system.”

Another way to look at this is that even if the proposed regulations were not adopted, entities would still be required to comply with Government Code section 12168.7 (d) such that “state officials shall ensure that microfilming, electronic data imaging, and photographic reproduction are done in compliance with minimum standards or guidelines, or both, as recommended by ANSI or AIIM for recording of permanent records or nonpermanent records.”

The regulations do not mandate changes to existing systems and only require the standards be included as part of new systems that are yet to be designed.

### **OTHER REQUIRED SHOWINGS – GOVERNMENT CODE 11346.2(b)(2)-(4)**

#### **Technical, Theoretical, and Empirical Study, Report, Similar Document – Gov. Code 11246.2(b)(2)**

The Secretary of State did not rely on any technical, theoretical, or empirical studies or reports in proposing the adoption of these regulations. However, there was a lot of consultation with interested persons, including state agencies or department directly affected by these regulations, as well as research to determine what others were doing or had already done to see if California could merely follow what was already done. What took place is listed below.

### Research of California Code for References to ANSI or AIIM Standards or Guidelines

During our review of the code to see what other California code sections referenced to ANSI and AIIM standards or guidelines, we found two - Government Code section 14756 and Government Code section 68150, which allow the preservation of records according to minimum standards or guidelines recommended or adopted by ANSI or AIIM. However, no specific standard or guideline is referenced.

### Research of the 50 States in the United States and Nonprofits.

The Secretary of State did a research of the websites among the 50 states in the United States, as well as a few non profits, to see what others were doing to adopt standards from ANSI, AIIM or ISO. Our research concluded that Michigan had the most number of references to ANSI, AIIM or ISO standards. Under the Michigan's authority conferred on the department of history, arts, and libraries by sections 2 and 4 of the records reproduction act, Michigan encouraged its audience to seek these standards for more information to assist state agencies and local governments in complying with Michigan law. The information was found in 2009 and, as of the date of this writing, was still available at

[http://www.michigan.gov/documents/hal\\_mhc\\_rms\\_st\\_for\\_digitizing\\_125531\\_7.pdf](http://www.michigan.gov/documents/hal_mhc_rms_st_for_digitizing_125531_7.pdf)

### Conferring with the Department of General Services

The Secretary of State consulted with the Department of General Services during the development of these proposed regulations, as required by Government Code 12168.7(b). The consultations occurred in meetings that took place in 2009 on January 22, 2009, July 13, 2009 and November 2, 2009. In addition, the Department of General Services participated in the meeting conducted with interested parties that took place in 2010. The meetings were conducted to share with the Department of General Services to ensure they were aware of the action being taken by the Secretary of State and at the same time determine if anything the Secretary of State was doing would conflict with their efforts under Government Code 14756. No reservations or concerns were expressed with the regulations being proposed by the Secretary of State's office. In addition, the Department of General Services continued to participate in our development efforts of the regulations by participating in the other meetings held with interested persons.

### Conferring with Interested Persons

As another venue to ensure the Secretary of State adopted standards that would meet the needs of state and local government as provided under Government Code section 11346(b), the Secretary of State conducted meetings with interested persons before initiating regulatory action. Three of these meetings included interested persons from diverse groups, including records managers, information technology staff, city clerks/recorders, state agencies, including the Department of General Services, non profit entities, and others responsible for electronic records. These meetings took place either

in person, via telephone or webinar on February 2009, March 2009 and again January 2010.

Because of the feedback received during the development of these regulations, it is important to discuss here what these regulations are not intended to do.

- 1) Nothing in these regulations is intended to prevent the use of microfilm, microfiche, or paper as the official record.
- 2) Nothing in these regulations defines when to use microfilm, microfiche or paper as its official record.
- 3) Nothing in these regulations requires the conversion of existing images into the newly required PDF/A format for those choosing PDF.
- 4) Nothing in these regulations prevents state officials from continuing to use ANSI or AIIM standards that may have been adopted under Government Code section 12168.7(d).
- 5) The need to maintain (2) separate electronic copies of the document or record to meeting the conditions of a 'Trusted System' in which the copy cannot be altered does not require maintaining two archiving systems or a second "trusted system."
- 6) These regulations are not addressing record management needs but the technology and related procedures to "adopt uniform standards for the purpose of storing and recording permanent and nonpermanent documents in electronic media" as stated in Government Code section 12168.7(a).
- 7) The adoption of standards from the Association for Records Managers and Administrators (ARMA) is not allowed under the current provisions of the code.

#### Survey conducted by the National Association of Secretaries of State

The National Association of Secretaries of State, on behalf of the California Secretary of State's office, sent out a survey question asking the secretaries of state if they had adopted standards or guidelines recommended by ANSI or AIIM, or were in the process of doing so. The e-mail is listed below in Table 1. The responses received were from Kentucky, New Jersey, Rhode Island, Louisiana, Wyoming, North Dakota, New Mexico, Minnesota and Texas. The conclusion was most states had some form of statute, regulations, bulletin, handbook, or guideline covering electronic records. New Mexico reported that it had incorporated AIIM as one of their references. However, none of the responses seemed to include the standard or guideline being incorporated by reference in this rulemaking effort.



**Table 1:**

From: Fisher, Stacy [mailto:sfisher@sso.org]  
Sent: Monday, August 24, 2009 10:07 AM  
To: NASS Secretaries; NASS State Contacts ; Executive Assistants  
Cc: Reynolds, Leslie; Milhofer, John  
Subject: NASS Survey Question: Records Regulations

Good Afternoon:

The California Secretary of State's Office is in the process of adopting regulations requiring California agencies to comply with minimum standards or guidelines for recording permanent or non-permanent records as recommended by the American National Standards Institute (ANSI) or the Association for Information and Image Management (AIIM). The California Office would like to know if any other NASS member states have adopted the standards of these organizations, or are currently in the process of doing so.

For more information about California's rulemaking, please visit their website at <http://www.sos.ca.gov/admin/electronic-documents.htm>

The information that you provide may be reviewed as part of California's rulemaking process. If you have any feedback, please respond to this message and we will forward your comments to the California Secretary of State's Office.

Thank you,

Stacy Fisher  
Meeting Planner/ Executive Assistant  
National Association of Secretaries of State  
444 N. Capitol Street N.W., Suite 401  
Washington, DC 20001  
202.624.3525  
202.624.3527 (fax)

**Current Costs of Various Standards or Guidelines Referenced**

The costs for the standards or guideline that are recommended in the proposed regulations or in the guideline would be as shown below:

Standard	Description	Price
ANSI/AIIM/CGATS/ISO 19005-1:2005 (incorporated by reference)	Document Management - Electronic File Format for Long-term) Preservation - Part 1: Use of PDF 1.4 (PDF/A-1)	\$ 92.00

Standard	Description	Price
AIIM ARP1-2009	Recommended Practice - Analysis, Selection, and Implementation of Electronic Document Management Systems (EDMS)	Free
ISO TR 15801:2009 (optional)	Document management - Information stored electronically - Recommendations for trustworthiness and reliability	\$ 141.00
ISO TR 12033:2009 (optional)	Document management - Electronic imaging - Guidance for selection of document image compression methods	\$ 86.00
	Cost Range Total	\$ 92.00 to 319.00

#### **Reasonable Alternatives Considered – Gov. Code 11346.2(b)(3)(A)**

No other reasonable alternatives have been presented to or considered by the Secretary of State's Office.

#### **Reasonable Alternatives That Would Lessen the Impact on Small Businesses – Gov. Code 11346(b)(3)(B)**

The Secretary of State has not identified any alternatives that will lessen any adverse impact on small businesses. The proposed regulatory action should facilitate the overall recording, storing, and reproducing permanent and nonpermanent documents or records in electronic media and generally benefit small businesses.

#### **Evidence Relied Upon to Support the Initial Determination That the Regulations Will Not Have a Significant Adverse Economic Impact On Business – Gov. Code 11246(b)(4)**

There is no evidence supporting any adverse economic impact on any business. Government Code section 12168.7(d) already provides that until the time that statewide standards are adopted, state officials would ensure that microfilming, electronic data imaging and photographic reproduction are done in compliance with minimum standards or guidelines, or both, as recommended by ANSI or AIIM for recording of permanent records or nonpermanent records. These regulations are intended to clarify and interpret what is already required in the code.

#### **ALTERNATIVE DETERMINATIONS**

The Secretary of State has not identified any alternatives that will lessen any adverse impact on small businesses. The proposed regulatory action should facilitate the overall recording, storing, and reproducing permanent and nonpermanent documents or records in electronic media and generally benefit small businesses.